IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.627 of 2000.

Date of decision: September 26th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Ashok Kumar. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?No

For the Appellant: Mr.D.S. Nainta, Deputy Advocate General.

For the Respondents: Mr. Anuj Nag, Advocate.

Surinder Singh, J (oral):

Heard and gone through the record.

In nut-shell, the prosecution case has been that on 28.10.1995, at about 3.3.30 p.m., the complainant Kewal Kumar was riding on his Mule and was going to village Preai. He met Ashok Kumar, who caught hold of the complainant with his arm and threw him on the ground and gave kick and fist blows and then picked up a stone and hit it on the left ear, with the result the complainant fell unconscious. After sometime, when he regained his conscious, he went towards his house, but on the way, he met his father Jaisi Ram, who was weeping because of the beatings given by the respondent. The respondent proclaimed that they had stolen their rice from his Sheller. The matter was reported to the police. On the same day, the complainant and his father were medically examined. His father sustained the fracture on Ulna. Thus, a case under Sections 323, 325 and 506 of the Indian Penal Code was registered. The police took into possession the X-ray,

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Whether reporters of local Papers may be allowed to see the judgment? Yes

medical certificates and recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure. On completing the challan, it was presented in the court for trial.

Under the aforesaid sections, the charges were framed against the respondent. He pleaded not guilty and claimed trial.

Prosecution examined their witnesses and the learned trial court on the perusal of the evidence, acquitted the respondent by giving him the benefit of doubt.

The findings for acquittal have been challenged in this appeal on law and facts.

I have reappraised the evidence on record carefully. Initially the case of the complainant as set out in the report Ext.PW7/A was as precisely stated supra, but as PW1, the complainant has totally deviated from his earlier version. According to him, when he regained senses, he went to his village and thereafter while going to lodge the report to the Police Station, he met his father on the way. At that time, he was beaten up by the respondent and on twisting the arm of his father by the respondent, he had sustained the fracture. In the cross-examination, he has stated that he had met his brother and father at village Puhara. Thereafter, they went to the police station by bus which means that he had not seen his father being given beatings by the respondent nor he has stated that his father or his brother had disclosed this fact of giving beatings by the respondent. PW4 Jaisi Ram, the father of the complainant has stated that before giving beatings by the respondent, his son was beaten up, whereas he was not present at that time. Further he has admitted that he had given seven bags of paddy in the Sheller of the respondent for thrashing, but he denied that in absence of the respondent, he picked up one bag in excess and thereafter the respondent was demanding it back. He also

denied that there was quarrel over that bag of rice. Dr. N.S. Bedi (PW2) has stated that the injuries in question can be sustained by a fall. PW3 Sanjay Kumar, alleged eye witness has not supported the case of the prosecution.

On the critical examination of the evidence aforesaid, it is apparent that the evidence of the prosecution has moved away to a great extent from the main pivotal of the case which was initially set. There are improvements, contradictions and omissions. There is also no evidence regarding threatening given to the complainant or his father in order to constitute the offences of criminal intimidation. The alleged history of giving beatings to the complainant and his father, as propounded, does not inspire confidence in view of the major contradictions which have been noticed by the learned trial court, therefore, the learned trial court has rightly given the benefit of doubt to the respondents for acquitting him, which requires no interference. Accordingly, the appeal is dismissed.

The respondent is discharged of his bail bonds entered upon by him at any time during the proceedings of this case.

September 26, 2007. **(Surinder Singh)**
(PDS) **Judge**.